

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

CASE NO. 5:09-cr-00980 EJD

Plaintiff(s),

**ORDER DENYING DEFENDANT'S  
MOTION TO TERMINATE OR MODIFY  
SUPERVISED RELEASE**

v.

MICHAEL BAUER,

[Docket Item No(s). 3]

Defendant(s).

On April 8, 2003, Defendant Michael Bauer ("Defendant") was convicted by a jury of conspiracy to distribute and possession with intent to distribute methamphetamine in violation of 21 U.S.C. §§ 846 and 841(a)(1). See Judgment, Docket Item No. 2. Judge Myron H. Thompson of the United States District Court for the Middle District of Alabama then sentenced Defendant to a term of imprisonment of 85 months followed by a 5-year term of supervised release. See id.

Defendant was released from custody on August 4, 2008, and thereafter began serving the imposed term of supervised release. See Mot. to Terminate or Modify Supervised Release ("Motion"), Docket Item No. 3. On October 8, 2009, responsibility for Defendant's supervision was transferred from Alabama to the Northern District of California. As a condition of supervised release, Defendant is prohibited from leaving the judicial district without the permission of the court or probation officer. See id.

Defendant is scheduled to be released from supervision on August 3, 2013. After serving approximately three and one-half years of the five-year term, Defendant now moves for an order

1 terminating supervised release pursuant to 18 U.S.C. § 3583(e)(1). The Government has filed a  
2 response to Defendant's motion and the Probation Office has provided a recommendation to the  
3 court. Having considered all relevant submissions and documents, the court finds this matter  
4 suitable for decision without a hearing. For the reasons stated below, Defendant's motion will be  
5 denied.

### 6 I. DISCUSSION

7 18 U.S.C. § 3583(e)(1) provides, in pertinent part:

8 The court may, after considering the factors set forth in section 3553  
9 (a)(1), (a)(2)(B), (a)(2)(C), (a)(2)(D), (a)(4), (a)(5), (a)(6), and (a)(7) --

10 (1) terminate a term of supervised release and discharge the defendant  
11 released at any time after the expiration of one year of supervised  
12 release, pursuant to the provisions of the Federal Rules of Criminal  
13 Procedure relating to the modification of probation, if it is satisfied  
14 that such action is warranted by the conduct of the defendant released  
15 and the interest of justice . . . .

16 "[T]he plain language of the statute indicates that the district courts have broad discretion to  
17 alter the conditions of a defendant's supervised release." United States v. Miller, 205 F.3d 1098,  
18 1100 (9th Cir. 2000). "Occasionally, changed circumstances - for instance, *exceptionally* good  
19 behavior by the defendant or a downward turn in the defendant's ability to pay a fine or restitution  
20 imposed as conditions of release - will render a previously imposed term or condition of release  
21 either too harsh or inappropriately tailored to serve the general punishment goals of section  
22 3553(a)." United States v. Lussier, 104 F.3d 32, 36 (2nd Cir. 1997) (emphasis added). The  
23 modification or termination mechanism provided by § 3583(e)(1) allows the court "to respond to  
24 changes in the defendant's circumstances that may render a previously imposed condition of release  
25 either too harsh or inappropriately tailored to serve the general punishment goals of § 3553(a)." United States v. Gross, 307 F.3d 1043, 1044 (9th Cir. 2002).

26 Here, Defendant argues that termination of supervised release is appropriate for two main  
27 reasons. First, Defendant contends he has complied with all terms of his supervised release and has  
28 "successfully adjusted to reentry into society" by securing employment, completing several  
rehabilitation programs, and becoming involved with his family. Second, Defendant believes that  
the condition restricting travel hinders his ability to work.

1 The Government opposes Defendant's request. As to Defendant's claim of compliance with  
2 release conditions and reentry into society, the Government argues that these circumstances, while  
3 commendable, do not themselves constitute the type of changed circumstances or "exceptionally  
4 good behavior" contemplated by Lussier and its progeny. See Lussier, 104 F.3d at 36; see also  
5 Folks v. United States, 733 F. Supp. 2d 649, 651 (W.D.N.C. 2010) ("[E]ven '[m]odel prison conduct  
6 and full compliance with the terms of supervised release is what is expected of a person under the  
7 magnifying glass of supervised release and does not warrant early termination.'"); see also United  
8 States v. McKay, 352 F. Supp. 2d 359, 361 (E.D.N.Y. 2005) (finding that defendant's resumption of  
9 his "pre-incarceration life," including the restoration of family participation, "are expected of a  
10 person on supervised release and do not constitute the 'exceptional behavior'" contemplated by §  
11 3583(e)(1)); see also United States v. Grossi, No. 04-40127 DLJ, 2011 U.S. Dist. LEXIS 22831, at  
12 \*5-6, 2011 WL 704364 (N.D. Cal. Feb. 11, 2011) ("Mere compliance with the terms of supervised  
13 release is what is expected, and without more, is insufficient to justify early termination."). In  
14 response to Defendant's issue with the travel condition, the Government points out that Defendant  
15 has not established that termination of the restriction is necessary to alleviate a particular hardship.  
16 Moreover, the Government believes this issue is better handled by the probation officer in the first  
17 instance.

18 For its part, the Probation Office does not recommend early termination of supervised release  
19 for Defendant. Although the Probation Office concurs that Defendant has been compliant, his  
20 conduct has not been described as exceptional.

21 After considering all the statutory factors, the court concurs with the Government and the  
22 Probation Office that Defendant has not demonstrated the type of circumstances justifying a  
23 modification or termination of his supervised release. While the court does not wish to minimize  
24 Defendant's laudable post-incarceration accomplishments, it is nonetheless apparent that the reasons  
25 cited by Defendant - compliance with release conditions, resumption of employment and  
26 engagement of family life - are expected milestones rather than a change of circumstances rendering  
27 continued supervision no longer appropriate. See McKay, 352 F. Supp. 2d at 361; see also United  
28 States v. Wientraub, 371 F. Supp. 2d 164, 167 (Dist. Conn. 2005) ("Although Weintraub's ongoing

1 and full compliance with all conditions of supervised release, including payment of the fine and  
2 restitution, is commendable, in the end that is what is required of all criminal defendants and is not a  
3 basis for early termination of his supervised release.”). Indeed, Defendant may receive additional  
4 benefit from the balance of the release term.

5 Nor has Defendant demonstrated that the travel restriction is unduly burdensome such that it  
6 should be modified or terminated. Although Defendant generally indicates it “can take from two  
7 weeks to a month” to obtain permission to travel outside the district, he has not cited a specific  
8 instance for which the travel restriction limited his ability to perform his job duties. See United  
9 States v. Rasco, No. 88 Cr. 817 (CSH), 2000 U.S. Dist. LEXIS 497, at \*6-7, 2000 WL 45438  
10 (S.D.N.Y Jan. 19, 2000). Moreover, the court is aware that travel requests, especially those relating  
11 to employment, can be expedited and accommodated through the Probation Office. It is therefore  
12 recommended that Defendant consult his assigned probation officer if the travel restriction has truly  
13 become an obstacle.


14 Ultimately, the seriousness of Defendant’s crimes of conviction coupled with his particular  
15 history support maintenance of the full 5-year term. The sentence imposed was and remains suitably  
16 tailored to the offensive conduct.

## 17 II. ORDER

18 Based on the foregoing, Defendant’s motion to terminate or modify supervised release is  
19 DENIED.

20  
21 **IT IS SO ORDERED.**

22  
23 Dated: April 13, 2012

24   
EDWARD J. DAVILA  
United States District Judge